

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL

No S APCI 2011 0103

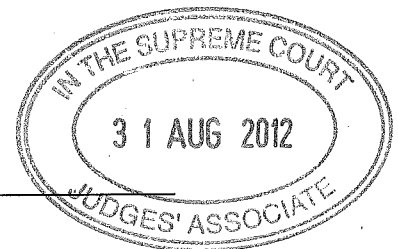
BETWEEN:

GRAHAM GOLDBERG & ORS
(according to the Schedule of Parties)
- and -

Appellants

BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING CORPORATION (A.C.N. 007 457 141) & ORS (according to the Schedule of Parties)

Respondents



ORDER

JUDGE OF THE COURT: The Honourable Justice Judd

DATE MADE: 31 August 2012

ORIGINATING PROCESS: Originating Motion

HOW OBTAINED: Return of summons

ATTENDANCE: G. Bigmore, one of Her Majesty's Counsel for the Appellants

P. Anastassiou of Senior Counsel with R. G. Craig of counsel for the First Respondent

W. Harris of Senior Counsel with M Rush of counsel for the Second Respondent

O. Bigos for the Third to Fifth Respondents and Timbercorp Securities Limited (in liquidation)

M. Hoyne for MRB Equities Pty Ltd, Redvil Pty Ltd and Ferrari Investments Holdings Pty Ltd

OTHER MATTERS: The Court notes the following matters:

1. On 25 July 2012, in each of the following proceedings, a compromise of the proceeding was reached (each, a *Compromise* and together, the *Compromises*), the terms of which were

contained in a deed of compromise executed by the parties and Timbercorp Securities Limited (in liquidation) ACN 092 311 469 (*TSL*):

- (i) this proceeding (*Almond Land Rights Appeal Proceeding*);
- (ii) Supreme Court of Victoria Proceeding No. S CI 2011 6604 (*Liparoo and Yungera Rights Proceeding*);
- (iii) Supreme Court of Victoria Proceeding No. S CI 2011 6606 (*Solara Rights Proceeding*);
- (iv) Supreme Court of Victoria Proceeding No. S CI 2010 1354 (*BB Olives Rights Proceeding*); and
- (v) Supreme Court of Victoria Proceeding No. S CI 2011 6777 (*Fenceport Rights Proceeding*)



(together, the *Timbercorp Apportionment Proceedings*).

2. Each Compromise is expressed to be conditional on (among other things):

- (i) the Court approving the Compromise and ordering that it shall be binding on the absent persons represented by the representative parties appointed in the relevant proceeding pursuant to rule 16.01(2) of the Supreme Court (General Civil Procedure) Rules 2005 (*Rules*); and
- (ii) the Court approving the Compromise in each of the other Timbercorp Apportionment Proceedings and ordering that each such Compromise shall be binding on the absent persons represented by the representative parties appointed in the relevant proceeding pursuant to rule 16.01(2) of the Rules.

3. On 27 August 2012, by summons issued by the plaintiff (or, in the case of the Almond Land Rights Appeal Proceeding, the first respondent) in each of the Timbercorp Apportionment Proceedings, application was made for (among other things) approval of the relevant Compromise pursuant to rule 16.01(4) of the Rules (each, an **Approval Application** and, together, the **Approval Applications**).

4. These orders will be posted at each of:

- (i) www.clarendonlawyers.com.au;
- (ii) www.kordamentha.com/creditor-information/Australia/51; and
- (iii) www.abl.com.au/timbercorp/compromises.htm,

as soon as practicable after the making of these orders.



THE COURT ORDERS BY CONSENT THAT:

1. The Approval Application made in the Almond Land Rights Appeal Proceeding be set down for hearing before the Honourable Justice Judd on 3, 4 and, to the extent required and subject to the availability of the Court, 5 October 2012, on an estimate of 2 hearing days.
2. MRB Equities Pty Ltd, Redvil Pty Ltd and Ferrari Investments Holdings Pty Ltd (the **Funder**) have leave to be heard on the hearing of the Approval Application.
3. On or before 19 September 2012:
 - (a) each party to the Almond Land Rights Appeal Proceeding;
 - (b) TSL;
 - (c) any absent person represented in the Almond Land Rights Appeal Proceeding who proposes to raise an objection to the Compromise in respect of the Almond Land Rights Appeal Proceeding, and
 - (d) the Funder,

is to file and serve any affidavit material upon which it intends to rely at the hearing.

4. On or before 25 September 2012:

- (a) each party to the Almond Land Rights Appeal Proceeding;
- (b) TSL;
- (c) any absent person represented in the Almond Land Rights Appeal Proceeding who proposes to raise an objection to the Compromise in respect of the Almond Land Rights Appeal Proceeding, and
- (d) the Funder,

is to file and serve any affidavit material in reply upon which it intends to rely at the hearing.

5. On or before 28 September 2012:

- (a) each party to the Almond Land Rights Appeal Proceeding;
- (b) TSL;
- (c) any absent person represented in the Almond Land Rights Appeal Proceeding who proposes to raise an objection to the Compromise in respect of the Almond Land Rights Appeal Proceeding, and
- (d) the Funder,

is to file and serve an outline of its submissions upon which it intends to rely at the hearing.

6. On or before 1 October 2012:

- (a) each party to the Almond Land Rights Appeal Proceeding;
- (b) TSL; and
- (c) any absent person represented in the Almond Land Rights Appeal Proceeding who proposes to raise an objection to the Compromise in respect of the Almond Land Rights Appeal Proceeding,

is to file and serve any outline of its submissions in reply upon which it intends to rely at the hearing.

7. The Approval Application made in the Almond Land Rights Appeal Proceeding is to be heard and determined concurrently with the Approval Applications made in each of the other Timbercorp Apportionment Proceedings.

8. The exhibits CJA-1, CJA-2 and CJA-3 to the Affidavit of Celia Jane Armstrong dated 30 August 2012 and filed in this proceeding be kept confidential.

9. There be no order as to costs.



DATE AUTHENTICATED: 31 August 2012



A handwritten signature in black ink, consisting of a series of fluid, connected strokes, positioned above a horizontal line.

The Hon. Justice Judd

SCHEDULE OF PARTIES

BETWEEN

GRAHAM GOLDENBERG

(in his capacity as representative of the Members in the 2002 Almond Project)

First Appellant

CHRISTOPHER MARK LITTLE

(in his capacity as representative of the Participant Members in the 2005 Almond Project)

Second Appellant

CONSTANTINE MOSHOPOULOS

(in his capacity as representative of the Participant Members in the 2006 Almond Project)

Third Appellant

DAVID BUTTERFIELD

(in his capacity as representative of the Participant Members in the 2007 Almond Project and as representative of the Members in the 2002 Private offer Scheme)

Fourth Appellant

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852)

as trustee for

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

(ACN 005 357 522) and **BOS INTERNATIONAL (AUSTRALIA) LIMITED**

(ACN 066 601 250) and **WESTPAC BANKING CORPORATION (ACN 007 457 141)**

First Respondent

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

(ACN 005 357 522)

Second Respondent

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)

Third Respondent

MARK ANTHONY KORDA

(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))

Fourth Respondent

LEANNE KYLIE CHESSER

(in her capacity as liquidator of Almond Land Pty Ltd (in liquidation))

Fifth Respondent